

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOSES CLARK,

Petitioner,

v.

GLEN E. PRATT,

Respondent.

Case No. 2:24-cv-06230-FWS-PD

**ORDER DISMISSING
PETITION FOR FAILURE TO
PROSECUTE**

I. Pertinent Procedural History and Petitioner's Contention

On July 22, 2024, Petitioner Moses Clark, proceeding pro se, filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. [Dkt. No. 1.] The Petition states the following ground for relief: Petitioner is entitled to resentencing under Senate Bill No. 567 because the trial court imposed the upper term sentence on the domestic-violence count without finding any aggravating factors to justify it.¹ [See *Id.* at 6-8.]

¹ Petitioner filed a prior federal habeas petition challenging his 2020 state-court conviction and sentence. See *Clark v. Shirley*, No. CV 20-11167-JVS-PD (C.D. Cal. filed Dec. 8, 2020). This claim was not ripe when Petitioner filed his first federal habeas petition because Senate Bill No. 567 did not take effect until long after he

1 On July 26, 2024, the Court advised Petitioner of his obligation to keep
 2 the Court apprised of his correct address and the consequences of his failure
 3 to do so. See Notice of Judge Assignment and Reference to a United States
 4 Magistrate Judge [Dkt. No. 4] (advising Petitioner that he is required to
 5 notify the Court within five (5) days of any address change, and that if mail
 6 directed by the Clerk to his address of record is returned undelivered by the
 7 Post Office, and if the Court and opposing counsel are not timely notified
 8 thereafter of his current address, the Court may dismiss the matter for want
 9 of prosecution) (citing Local Rule 83-2.4).

10 On November 21, 2024, the Court issued an Order to Show Cause
 11 (“OSC”) directed to Petitioner because the face of the Petition suggests that its
 12 sole claim for relief is not cognizable on federal habeas review.² [Dkt. No. 6.]
 13 Petitioner was admonished that his failure to respond to the OSC by January
 14 3, 2025, would be construed as a concession on his part that the sole claim
 15 was not cognizable on habeas review and the Court would dismiss the
 16 Petition. [Id. at 8.] The Court’s OSC was mailed to the address listed on the
 17 Petition, which was California Rehabilitation Center, in Norco California.
 18 [Id.]

19
 20
 21 filed his first petition and after the Court recommended that it be dismissed with
 22 prejudice. See *Brown v. Atchley*, 76 F.4th 862, 865 (9th Cir. 2023) (claim does not
 become ripe “until the facts that give rise to the constitutional claim first arise”).

23 ² Because Petitioner’s sole ground for relief exclusively concerns California law, it
 24 does not appear to be cognizable on federal habeas review. See *Halcrombe v. Hixon*,
 25 No. 24-cv-00450-RFL-PR, 2024 WL 1221949, at *1 (N.D. Cal. Mar. 20, 2024)
 (“Whether Halcrombe is entitled to resentencing under Senate Bill 567 is a question
 26 of state law and is not cognizable on federal habeas review.”); *Castro v. Johnson*, No.
 27 CV 23-03353-AB-RAO, 2023 WL 8143909, at *3 (C.D. Cal. Sept. 29, 2023) (claim
 28 that Petitioner was entitled to resentencing under Senate Bill No. 567 and other
 state-law provisions was not cognizable on federal habeas review), *accepted by* 2024
 WL 130149 (C.D. Cal. Jan. 10, 2024).

1 On December 16, 2024, the Court's OSC was returned from California
 2 Rehabilitation Center with a notation "RETURN TO SENDER--Paroled."
 3 [Dkt. No. 7.]

4 According to the California Incarcerated Records & Information Search
 5 ("CIRIS"), there are no results indicating that Petitioner is located at any
 6 CDCR facility using Petitioner's name and CDCR number.³ See
 7 <https://cdcr.ca.gov/search> (search for "Clark" and "Moses" and Petitioner's
 8 CDCR # BP1401) (last searched February 21, 2025.)

9 To date, Petitioner has not responded to the Court's OSC, provided an
 10 updated address, or otherwise communicated with the Court about his case
 11 since July 2024. Accordingly, the Petition is now subject to dismissal for
 12 Petitioner's failure to prosecute pursuant to Rule 41(b) of the Federal Rules of
 13 Civil Procedure and Local Rule 41-6.

14 **II. Discussion**

15 Local Rule 41-6 requires a party representing himself to "keep the Court
 16 ... apprised of such party's current address and telephone number, if any, and
 17 e-mail address, if any." It allows for dismissal of lawsuits for failure to comply
 18 with the rule: "If mail directed by the Clerk to a *pro se* plaintiff's address of
 19 record is returned undelivered by the Postal Service, and if, within fourteen
 20 (14) days of the service date, such plaintiff fails to notify, in writing, the Court
 21 and opposing parties of said plaintiff's current address, the Court may dismiss
 22 the action with or without prejudice for want of prosecution." Local Rule 41-6.

23 Petitioner's failure to keep the Court updated on his mailing address
 24 brings this case within the purview of *Carey v. King*, 856 F.2d 1439, 1441 (9th
 25 Cir. 1988) (per curiam), which examined when it is appropriate to dismiss a
 26 lawsuit for failure to prosecute, *see also Link v. Wabash R.R. Co.*, 370 U.S.

27 ³ According to CIRIS, there is an inmate named Moses Demetrius Clark, III, CDCR
 28 number BI1208 who was admitted to the custody of the CDCR on December 14, 2018
 by Nevada authorities and is incarcerated at Valley State Prison.

1 626, 629–30 (1962) (“The power to invoke [dismissal] is necessary in order to
2 prevent undue delays in the disposition of pending cases and to avoid
3 congestion in the calendars of the District Courts.”).

4 In determining whether dismissal for lack of prosecution is warranted, a
5 court must weigh several factors, including: (1) the public’s interest in
6 expeditious resolution of litigation; (2) the court’s need to manage its docket;
7 (3) the risk of prejudice to defendants; (4) the public policy favoring the
8 disposition of cases on their merits; and (5) the availability of less drastic
9 sanctions. *Carey*, 856 F.2d at 1440 (citation omitted). Unreasonable delay
10 creates a rebuttable presumption of prejudice to the other party that can be
11 overcome only with an affirmative showing of just cause by the petitioner. *In*
12 *re Eisen*, 31 F.3d 1447, 1452-53 (9th Cir. 1994). Dismissal is appropriate
13 under the foregoing analysis “where at least four factors support dismissal ...
14 or where at least three factors ‘strongly’ support dismissal.” *Hernandez v.*
15 *City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (citations omitted).

16 In this case, the first two factors – public interest in expeditious
17 resolution of litigation and the need to manage the Court’s docket – weigh in
18 favor of dismissal. The Court cannot hold this case in abeyance indefinitely
19 based on Petitioner’s failure to notify the Court of his correct address. *See*
20 *Carey*, 856 F.2d at 1441 (affirming dismissal of action for lack of prosecution
21 pursuant to local rule which permitted such dismissal when pro se plaintiff
22 failed to keep court apprised of correct address; “It would be absurd to require
23 the district court to hold a case in abeyance indefinitely just because it is
24 unable, through plaintiff’s own fault, to contact the plaintiff to determine if
25 his reasons for not prosecuting his lawsuit are reasonable or not.”).

26 Arguably, the third factor – prejudice to Respondent – does not counsel
27 in favor of dismissal because no viable pleading exists, and thus Respondent
28 is unaware that a case has been filed. However, the Ninth Circuit has held

1 that prejudice may be presumed from unreasonable delay. *See In re Eisen*, 31
2 F.3d at 1452-53; *Moore v. Teflon Commc'ns. Corp.*, 589 F.2d 959, 967-68 (9th
3 Cir. 1978). Petitioner's inaction in this matter is an unreasonable delay, given
4 that the Court has attempted to mail the OSC to Petitioner and has received
5 no communication. In the absence of any explanation, non-frivolous or
6 otherwise, for Petitioner's delay, the Court presumes prejudice. *See Laurino*
7 *v. Syringa Gen. Hosp.*, 279 F.3d 750, 753 (9th Cir. 2002) (presumption of
8 prejudice can be rebutted by a non-frivolous explanation); *Pagtalunan v.*
9 *Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Yourish v. California*
10 *Amplifier*, 191 F.3d 983, 991 (9th Cir. 1999)).

11 The fourth factor – the public policy favoring resolution on the merits –
12 ordinarily weighs against dismissal. The fifth factor – the availability of less
13 drastic sanctions – ordinarily counsels against dismissal. However, given the
14 Court's inability to communicate with Petitioner based on his failure to keep
15 the Court apprised of his current address, no lesser sanction is feasible.

16 In sum, four out of the five factors support dismissal. The Court
17 concludes that dismissal for failure to prosecute is warranted.

18 For the foregoing reasons, this action is dismissed without prejudice for
19 failure to prosecute.

20
21 **IT IS SO ORDERED**

22
23 DATED: February 25, 2025



24 Hon. Fred. W. Slaughter
25 UNITED STATES DISTRICT JUDGE
26
27
28